Supreme Court, U.S.
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No. 88-1395

In The

Supreme Court of the United States

October Term, 1988

THE MUNICIPAL COURT OF THE SOUTHEAST JUDICIAL DISTRICT, COUNTY OF LOS ANGELES; PORTER DE DUBOVAY; and RUSSELL L. SCHOOLING,

Petitioners,

vs.

ALVA GUTIERREZ,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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Respondent ALVA GUTIERREZ respectfully submits that the Petition for Writ of Certiorari be denied for the following reasons:

SUMMARY OF ARGUMENT

The petition should be denied for want of an actual case or controversy.

ARGUMENT

I. THE PETITION PRESENTS NO CASE OR CONTROVERSY

This action was dismissed with prejudice by the District Court on February 6, 1989 (a memorandum decision dismissing this action is set forth below in the Appendix, Pgs. A1 *et seq.)*. There is no case or controversy before this Court. Without a case or controversy, this Court cannot exercise its jurisdiction pursuant to Article III of the Constitution, *Iron Arrow Honor Socy. v. Heckler,* 464 U.S. 67 (1983). Petitioners, in the absence of a case or controversy, have no standing to invoke the jurisdiction of this Court, *Princeton University v. Schmid,* 455 U.S. 100, 103 (1982).

The District Court below dismissed this action after the mandate of the Court of Appeals became final. No stay of mandate pending application for certiorari was made by petitioners pursuant to F.R.A.P. Rule 41(b).

Petitioners' request for an Order from this Court directing that the Court of Appeals opinion be deprived

of precedential value must be rejected. Defendant JOHN BUNNETT has not joined in the petition; he seeks no further judicial review of any decisions or orders in this case. The practice of depriving lower court opinions of precedential value when a case becomes moot has been criticized by commentators, "So long as the court believed that it was deciding a live controversy, its opinion was forged and tested in the same crucible as all opinions . . . loss of an opportunity for further review hardly seems grounds for denying any precedential effect." 13A Wright & Miller, *Federal Practice and Procedure* 2d, § 3533.10 at 442-443. Likewise, in moot cases, this Court deprives lower court opinions of precedential value only when the lower court itself was without jurisdiction to determine a controversy, as in *County of Los Angeles v. Davis*, 440 U.S. 625 (1979) (Court of Appeals in 1977 should not have ruled on case involving injunction against 1972 employment exams) and *Iron Arrow Honor Socy., supra* (case became moot prior to Court of Appeals decision). In the present case, the Court of Appeals properly extended jurisdiction over the petitioners' appeals from preliminary injunction and other interlocutory orders. Petitioners' suggestion that the federal courts did not have subject matter jurisdiction to issue injunctions under 42 U.S.C. § 2000e-16 *et seq.*, or that subject matter was not invoked by respondent's motion for preliminary injunction and First Amended Complaint is frivolous. Petitioners never moved to modify or dissolve the preliminary injunction for any alleged "changed circumstances."

To the extent that petitioners contend that the dismissal itself constituted an abuse of discretion, they

should seek judicial review in the Court of Appeals. Otherwise, the settlement of the action ends the "case or controversy", *Lake Coal Co. v. Roberts & Schaefer Co.*, 474 U.S. 120 (1983).

CONCLUSION

For all the foregoing reasons, the petition for writ of certiorari should be denied.

Dated: March 15, 1989

Respectfully submitted,

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APPENDIX

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ALVA GUTIERREZ, Plaintiff, v. MUNICIPAL COURT OF THE SOUTHEAST JUDICIAL DISTRICT Defendants.	CASE NO. CV 85-2172 RG ORDER (Filed Feb. 16, 1989)

The plaintiff, an Hispanic American employed as a clerk in the Municipal Court of the Southeast Judicial District, brought this action for damages and injunctive relief against the County of Los Angeles and three of the Municipal Court Judges challenging a rule which prohibited the plaintiff and other clerical staff from speaking Spanish except during breaks.

The County of Los Angeles was dismissed from this action in 1985 because it was not responsible for the adoption or maintenance of the challenged rule.

This Court issued a Preliminary injunction enjoining the challenged rule, and an appeal was taken by the defendant judges to resolve the appropriateness of that injunction, and whether the judges were absolutely immune from liability.

On January 27, 1988, the Ninth Circuit Court of Appeals issued its opinion upholding the appropriateness of the Preliminary Injunction and finding that the

defendant judges were not entitled to absolute immunity for damages. A Petition for Rehearing was denied. That Ninth Circuit opinion is now final and its mandate has been spread.

The plaintiff has submitted an Request for Order of Dismissal and Proposed Order of Dismissal, a copy of which is attached, which amounts to a settlement agreement (hereinafter "Settlement Agreement") between the county of Los Angeles and the plaintiff. The terms of the Settlement Agreement require this Court's approval and dismissal of the action with prejudice.

Defendant judges oppose the dismissal of the action, indicating their desire to litigate this matter further.

Notwithstanding the objection of defendant judges, the Court approves the Requested Order of Dismissal and dismisses this action with prejudice.

Although the County of Los Angeles has been dismissed from this action the County has a substantial interest in this matter.

1. The Court is advised that in *Municipal Court of the Southeast Judicial District v. Mark Bloodgood* (Los Angeles Superior Court case number C 551833) the Los Angeles Superior Court held that the County of Los Angeles was responsible for the reasonable attorneys fees, costs, and expenses necessarily incurred by the judges who are defendants in this Federal action in defending the "English Only" rule which is the subject of this Federal action. The County of Los Angeles advises that to date, the County of Los Angeles has been required to pay the

private counsel retained by the judges over $239,000 for such purposes.

2. Should the plaintiff prevail, she will be entitled to an award of attorneys fees pursuant to 42 U.S.C. § 1988 in addition to any damages awarded. Under State law and the judgment referred to in paragraph 1 above, the County of Los Angeles will ultimately be required to pay such costs and damages, as well.

3. As reflected in the attached Order of the Civil Service Commission of the County of Los Angeles, of which this Court takes judicial notice, on March 25, 1987, the Civil Service Commission of the County of Los Angeles found that the "English Only" rule at issue in this Federal action violated the anti-discrimination provisions of Los Angeles County Civil Service Rule 26, and advised the Municipal Court of the Southeast Juducial District that it "acts at its peril if it enforces the rule." The Court is advised that in *Municipal Court of the Southeast Judicial District v. Los Angeles County Civil Service Commission* (Los Angeles Superior Court case number C 539823), the Municipal Court of the Southeast Judicial District sought a Writ of Prohibition challenging the jurisdiction of the Civil Service Commission to conduct the hearing concerning the discrimination complaints concerning its "English Only Rule." This Court is advised that the Los Angeles Superior Court denied the Writ of Prohibition in April 1985, and that the Municipal Court appealed that decision, but dismissed that appeal prior to a decision.

Under these circumstances the Settlement Agreement is appropriate. It resolves the potential liability of the County of Los Angeles for the plaintiff's claim. It brings

to an end the litigation and the County's duty to pay the judges attorneys' fees, costs, and expenses incurred in defending this "English Only" rule.

GOOD CAUSE APPEARING therefore, this action is dismissed with prejudice on the terms set forth in the attached Settlement Agreement, and the Court approves that Settlement Agreement.

IT IS SO ORDERED.

/s/ RICHARD A. GADBOIS, JR.
RICHARD A. GADBOIS, JR.
United States District Judge

DATED: Feb. 16, 1989